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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,108	08/29/2003	Stephen F. Brown	547-P0001	9842

23334 7590 03/19/2004

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EXAMINER
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GRILES, BETHANY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/652,108

Applicant(s)

BROWN, STEPHEN F.

Examiner

Bethany L. Griles

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 8, 9, 10, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Stewart (US5189825).
3. Regarding claims 1 and 8, Stewart discloses an elongate body 1 having a forward and a rear portion; a hydrodynamic lip 11 mechanically coupled to the forward portion of the body; a hook coupling means 10, 19; and a line coupling means 5.
4. Regarding claim 2, Stewart discloses that the hydrodynamic lip 11 is generally shaped in an outwardly convex shape (see figure 2).
5. Regarding claims 3 and 12, Stewart discloses a counterweight means 6 mechanically coupled to the body; a propeller means 17; and a propeller stabilizing means 3.
6. Regarding claims 4 and 9, Stewart discloses that the hydrodynamic lip is affixed to the forward portion of the body 1 thereby the fishing lure generally conforming to the silhouette of a prey fish (fig 1).
7. Regarding claim 10, Stewart discloses that the hydrodynamic lip provides a wobble being magnified by wave action while the body moves near the surface of the water (col 4, line 1).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5-7, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart in view of Phillips (US4245421).

10. Regarding claim 5, Stewart discloses a fishing lure with a weight and lip.

11. Stewart does not disclose a skimmer lip.

12. Phillips discloses a skimmer lip 16, 18.

13. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Phillips to the invention of Stewart in order to improve the movement of the lure through the water.

14. Regarding claim 6, Stewart discloses the fishing lure with a weight and lip.

15. Stewart does not disclose the skimmer lip of claim 5, or that the skimmer lip and the lower side of the fishing lure provide a rolling action to the lure while moving through the water.

16. Phillips discloses that the skimmer lip and lower body portion provide a rolling action while moving through the water (col 2, lines 28-34).

17. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Phillips to the invention of Stewart in order to improve the movement of the lure through the water.

18. Regarding claims 7 and 14, Stewart discloses the fishing lure with a weight and lip.

19. Stewart does not disclose the skimmer lip of claim 5, or that the skimmer lip and the lower side of the fishing lure provide an erratic walk the dog action to the lure while moving through the water.

20. Phillips discloses that the skimmer lip and lower body portion provide a rolling action while moving through the water (col 2, lines 28-34).

21. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Phillips to the invention of Stewart in order to improve the movement of the lure through the water.

22. Claims 11, 13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart in view of Cox US 3371444.

23. Regarding claims 11, 13, and 15, Stewart discloses the lure with a hydrodynamic lip.

24. Stewart does not disclose the lure moves in a nose up orientation through the water at any speed without dipping below the water's surface.

25. Cox discloses the lure moves through the water in a nose up orientation (col 2, lines 49-57) through the water at any given trolling speed (col 1, line 40).

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26. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Cox to the invention of Stewart in order to assist the angler in controlling the movement of the lure through water.

***Conclusion***

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kelly US5263277; Gaal US5038512; Mills US3069801; Clapp US 2832169; Watterfield, Jr. US2822638; Johnston US 2585783; McEwen US2097986; Ito US 66714996.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703.308.2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
blg

Bethany L. Griles  
Examiner  
Art Unit 3643



Peter M. Poon  
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3/17/04